

ID: CCA\_2014081909342804

Third Party Communication: None

UILC: 6601.01-01

Date of Communication: Not Applicable

Number: **201438024**

Release Date: 9/19/2014

---

**From:** [REDACTED]  
**Sent:** Tuesday, August 19, 2014 9:34:28 AM  
**To:** [REDACTED]  
**Cc:** [REDACTED]  
**Bcc:**  
**Subject:** RE: Counsel Advise Requested

Hi ,

We agree with you that although the interest cannot be assessed, it can and should be used to offset any refund of withholding and the child tax credit.

Under section 6601(d)(1), if the amount of any tax is reduced by reason of a carryback of a net operating loss, such reduction in tax shall not affect the computation of interest for the period ending with the filing date for the taxable year of the loss. Because the tax was never assessed for [REDACTED], interest cannot now be assessed. However, when deciding whether the TP has an overpayment, as stated in Lewis v. Reynolds, "the ultimate question presented for decision, upon a claim for refund, is whether the taxpayer has overpaid his tax." 284 U.S. 281, 283 (1932). Interest is treated in the same manner as tax under section 6601(e). Lewis v. Reynolds has been applied to offset a refund when the Service could not assess interest, Fisher v. United States, 80 F.3d 1576 (Fed. Cir. 1996). Here the taxpayer has not overpaid because interest was lawfully due for the time period prior to the loss. In addition, this situation appears almost identical to Situation 2 in Rev. Rul. 85-64, 1985-64 I.R.B. 35 (aside from the fact that in the revenue ruling, the taxpayer reported some tax for the year in question whereas the taxpayer in this case apparently did not).

If you have any questions or would like to discuss further, please let me know.

Thanks,